

***Election/Restrictions***

Claims 33-41, 43-46, 48-54 and 65-69 allowable. The restriction requirement among the inventions, as set forth in the Office action mailed on 06/19/2009, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The restriction requirement is hereby withdrawn.** In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Claims 55-64 are rejoined.

**EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Arthur Crawford on 10/5/2010.

The application has been amended as follows:

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In the Specification:

The following was inserted in the line after line 16 which reads "nm in a 0.7  $\mu$ M solution."

-- Brief Description of the Drawings

Fig. 1 shows a glucose response curve.

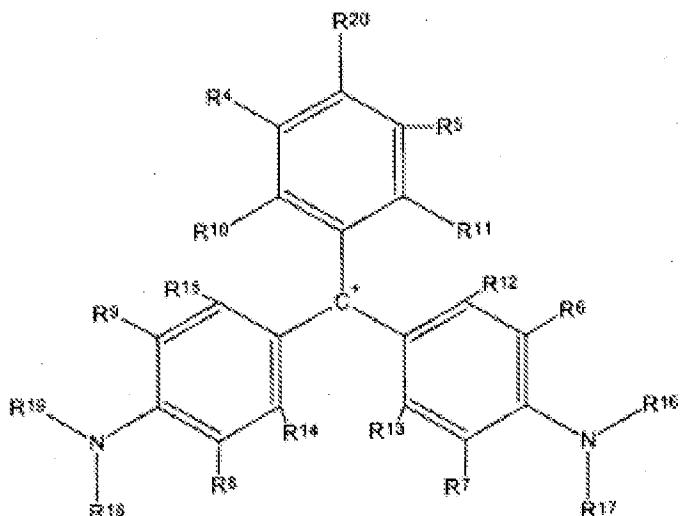
Fig. 2 shows a normalized spectrum of AF594 and HCMCV-1-dextran. --

In the Claims

Claims 42, 47, 58 and 64 were cancelled.

Claim 55 was replaced by the following:

-- 55. A dye compound having the formula:



wherein:

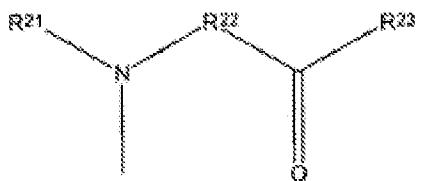
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$R^4$ ,  $R^5$ ,  $R^6$ ,  $R^7$ ,  $R^8$  and  $R^9$  are each independently H, halogen, alkyl, aryl, O-alkyl or S-alkyl and  $R^{10}$ ,  $R^{11}$ ,  $R^{12}$ ,  $R^{13}$ ,  $R^{14}$  and  $R^{15}$  are each independently hydrogen, O-alkyl, S-alkyl, or alkyl, or one or more pairs of groups  $R^4$  and  $R^{10}$  and/or  $R^5$  and  $R^{11}$  and/or  $R^6$  and  $R^{12}$  and/or  $R^7$  and  $R^{13}$  and/or  $R^8$  and  $R^{14}$  and/or  $R^9$  and  $R^{15}$  is a bridging group consisting of aryl, alkylene, O-alkylene, S-alkylene or N-alkylene optionally substituted with one or more of  $SO_3^-$ ,  $PO_3^{2-}$ , OH, O-alkyl, SH, S-alkyl, COOH,  $COO^-$ , ester, amide, halogen, SO-alkyl,  $SO_2$ -alkyl,  $SO_2NH_2$ ,  $SO_2NH$ -alkyl,  $SO_2N$ -dialkyl,  $SO_3$ -alkyl, CN, secondary amine or tertiary amine, provided that not all of  $R^{10}$ ,  $R^{11}$ ,  $R^{12}$ ,  $R^{13}$ ,  $R^{14}$  and  $R^{15}$  are hydrogen;  $R^{16}$ ,  $R^{17}$ ,  $R^{18}$  and  $R^{19}$  are each independently H, alkyl or aryl, or one or more of  $R^{16}$  and  $R^{17}$  or  $R^{18}$  and  $R^{19}$  is alkylene, optionally substituted with one or more of  $SO_3^-$ ,  $PO_3^{2-}$ , OH, O-alkyl, SH, S-alkyl, COOH,  $COO^-$ , ester, amide, halogen, SO-alkyl,  $SO_2$ -alkyl,  $SO_2NH_2$ ,  $SO_2NH$ -alkyl,  $SO_2N$ -dialkyl,  $SO_3$ -alkyl, CN, secondary amine or tertiary amine; or one or more of pairs of groups  $R^6$  and  $R^{16}$ ,  $R^{17}$  and  $R^{17}$ ,  $R^8$  and  $R^{18}$ , and  $R^9$  and  $R^{19}$  is alkylene, O-alkylene, S-alkylene or N-alkylene optionally substituted with one or more of  $SO_3^-$ ,  $PO_3^{2-}$ , OH, O-alkyl, SH, S-alkyl, COOH,  $COO^-$ , ester, amide, halogen, SO-alkyl,  $SO_2$ -alkyl,  $SO_2NH_2$ ,  $SO_2NH$ -alkyl,  $SO_2N$ -dialkyl,  $SO_3$ -alkyl, CN, secondary amine or tertiary amine

and

$R^{20}$  is a linker element selected from the group consisting of an active ester, an isothiocyanate, an acid chloride, an  $\alpha$ -halogenated ketone, an azide and an amine of the formula:

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R<sup>21</sup> is H or alkyl or aryl optionally substituted with one or more of SO<sub>3</sub><sup>-</sup>, PO<sub>3</sub><sup>2-</sup>, OH, O-alkyl, SH, S-alkyl, COOH, COO<sup>-</sup>, ester, amide, halogen, SO-alkyl, SO<sub>2</sub>N-dialkyl, CN, secondary amine or tertiary amine and R<sup>22</sup> is alkylene, O-alkylene, S-alkylene or N-alkylene or R<sup>21</sup> and R<sup>22</sup> are part of a ring, optionally substituted with one or more of SO<sub>3</sub><sup>-</sup>, PO<sub>3</sub><sup>2-</sup>, OH, O-alkyl, SH, S-alkyl, COOH, COO<sup>-</sup>, ester, amide, halogen, SO-alkyl, SO<sub>2</sub>NH<sub>2</sub>, SO<sub>2</sub>NH-alkyl, SO<sub>2</sub>N-dialkyl, SO<sub>3</sub>-alkyl, CN, secondary amine or tertiary amine and

R<sup>23</sup> is o-succinimidyl, o-pentafluorophenyl, Cl or  $\alpha$ -halogenated alkyl; and optionally comprising a counterion. --

Claim 61 was replaced by the following:

-- 61. A method of detecting or measuring an analyte with a reagent as claimed in

Claim 33, comprising the steps of:

contacting the reagent with a sample;

illuminating the reagent and sample with light of wavelength within the absorption spectrum of the fluorescent energy donor;

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detecting non-radiative energy transfer between the energy donor and energy acceptor by measuring the fluorescence of the energy donor; and

correlating the fluorescence measurements with the presence or concentration of the analyte. --

In claim 62, at line 2, "measuring" was deleted.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SUSAN HANLEY whose telephone number is (571)272-2508. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Susan Hanley/  
Examiner, Art Unit 1651